

**C.K., Appellant**

**DEPARTMENT OF THE ARMY, MATERIAL  
DEVELOPMENT & READINESS COMMAND,  
New Cumberland, PA, Employer**

*Appearances:*

*Appellant, pro se*

Office of Solicitor, for the Director

### Case Submitted on the Record

Before:

## JURISDICTION

**ISSUE**

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its April 7, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

On appeal, appellant contends that he needs a spinal cord stimulator to treat his accepted lower back conditions.

### **FACTUAL HISTORY**

OWCP accepted that appellant, a 34-year-old shipment clerk, sustained an exacerbation of chronic low back pain on June 27, 1986 as a result of slipping on carbon paper and falling in the performance of duty. It previously accepted that he sustained a lumbosacral sprain and an aggravation of a preexisting herniation at L5-S1 on February 14, 1985 under claim number xxxxxx845, which was combined with the present claim under master file number xxxxxx873. Appellant was placed on the periodic rolls to receive wage-loss compensation and has not returned to work.

In an August 29, 1986 report, Dr. Robert Gunderson, an orthopedic surgeon, advised that appellant had a June 1983 injury when lifting a sidewall of a mobile home after which he had a laminectomy in October 1983. He advised that appellant was doing well until February 1985 when he was trying to move a wall. Appellant had severe pain in both legs. After this, his pain continued, including pain in his calves since June 27, 1986. Dr. Gunderson opined that appellant had a recurrently herniated disc based on diagnostic testing and that appellant's condition was aggravated by the February 1985 incident. OWCP continued receiving reports of appellant's treatment and status.

OWCP referred appellant to Dr. Robert Draper, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and extent of his employment-related conditions. In a June 30, 2009 report, Dr. Draper reviewed a statement of accepted facts, appellant's medical history, and conducted a physical examination. He found that appellant had preexisting degenerative lumbar disc disease at L4-5 and L5-S1. Dr. Draper reported that appellant had a prior lumbar laminectomy in March 1983 at L4-5 for recurrent disc, which was not related to his federal employment. Appellant also had a nonwork-related removal of a small fatty tumor in 1983. Dr. Draper opined that appellant's accepted lumbar condition was still active, but his complaints of scrotal pain and pain in the testicles were not attributable to his low back condition or pathology. He concluded that appellant was capable of performing light-duty work for six hours per day that did not require him to lift more than 20 pounds occasionally and 10 pounds frequently.

On January 19, 2015 appellant requested authorization for spinal cord stimulator treatment and submitted an October 21, 2014 report from Dr. Atom Sarkar, a neurosurgeon, who asserted that appellant had lumbar disc surgery and then reinjured his back, which resulted in back, leg, groin, and testicular pain. Dr. Sarkar explained that a spinal cord stimulator might help appellant's testicular, leg, and back pain and arranged for him to be seen by pain management physicians for a trial for a spinal cord stimulator.

Appellant's request was referred to Dr. Morley Slutsky, a Board-certified occupational medicine physician and OWCP medical adviser, who found that spinal cord stimulators were used for low back conditions when all other treatments and spinal surgeries had failed and determined that the use of a spinal cord stimulator was not appropriate in appellant's case because he had not undergone surgery at the accepted L5-S1 level. Dr. Slutsky noted that

appellant complained of radiating testicular and right leg pain, but asserted that he was unable to comment because he did not have a magnetic resonance imaging (MRI) scan to review. He found that appellant was not eligible for a spinal cord stimulator regardless of these possible radiculopathies.

In response, appellant submitted a November 6, 2014 report from Dr. Shaik Ahmed, a Board-certified pain medicine specialist, who opined that appellant was a good candidate for spinal cord stimulator treatment. He asserted that appellant had severe testicular pain since 2009 with progressive worsening of symptoms. Dr. Ahmed explained that he was unsure as to the etiology of appellant's testicular pain and opined that it could be the result of nerve impingement from the lumbar spine, noting that appellant had an L4-5 extruded disc and L5-S1 disc displacement. Appellant further located pain in the lower back bilaterally with radiation down his right posterolateral leg into the ankle. Dr. Ahmed reported that appellant underwent a laminectomy several years earlier and a testicular denervation with hopes that some of the testicular pain would be resolved, but he had no relief. In a March 5, 2015 report, Dr. Ahmed reiterated his opinion that appellant might benefit from a spinal cord stimulator. He noted that appellant would undergo a trial and then receive a permanent lead implantation, if the trial was successful.

By decision dated April 7, 2015, OWCP denied medical authorization for a spinal cord stimulator on the basis that the treatment was not related to appellant's accepted conditions.<sup>3</sup>

### **LEGAL PRECEDENT**

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.<sup>4</sup> In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA.<sup>5</sup> OWCP has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from

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<sup>3</sup> By order dated December 1, 2015, the Board found that the case record was incomplete as it did not provide the full and complete decision of OWCP's April 7, 2015 decision and requested the Director of OWCP to transmit the complete contents of appellant's case record within 30 days. Docket No. 15-1676 (issued December 1, 2015). On January 12, 2016 OWCP stated that, pursuant to the Board's order, the complete decision was requested from the district office on December 11, 2015. On January 7, 2016 the district office provided a response indicating that there was no enclosure (notice of decision) to the April 7, 2015 decision and that the author of the decision was no longer employed with the district office.

<sup>4</sup> 5 U.S.C. § 8103.

<sup>5</sup> See *J.B.*, Docket No. 11-1301 (issued March 22, 2012).

established facts.<sup>6</sup> It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>7</sup>

Section 20 C.F.R. § 10.126 requires OWCP to issue a decision containing findings of fact and a statement of reasons.<sup>8</sup>

### **ANALYSIS**

The Board has duly considered the matter and finds that this case is not in posture for a decision and must be remanded to OWCP.

OWCP accepted that appellant sustained a lumbosacral sprain and an aggravation of a preexisting herniation at L5-S1 on February 14, 1985 and an exacerbation of chronic low back pain on June 27, 1986 in the performance of duty. On January 19, 2015 appellant requested authorization for a spinal cord stimulator to treat his accepted conditions. In a decision dated April 7, 2015, OWCP denied medical authorization for spinal cord stimulator treatment.

The Board finds that OWCP, in its April 7, 2015 decision, has not provided an adequate decision with findings of fact and a statement of reasons as to whether a spinal cord stimulator was appropriate treatment related to appellant's accepted conditions. It failed to sufficiently discuss or analyze the reports from Drs. Sarkar and Ahmed who found that appellant continued to suffer residuals of his employment-related injuries and opined that he was a good candidate for a spinal cord stimulator to treat his accepted conditions. Moreover, OWCP's reasoning was not clear. The April 7, 2015 decision contained no language regarding the standards used to authorize medical treatment, nor the specific reasons why authorization for the spinal cord stimulator was denied.

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation.<sup>9</sup> Section 10.126 of Title 20 of the Code of Federal Regulations provides that a decision shall contain findings of fact and a statement of reasons.<sup>10</sup> The Board has held that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.<sup>11</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> See *Dale E. Jones*, 48 ECAB 648 (1997); *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>8</sup> 20 C.F.R. § 10.126. See also *M.M.*, Docket No. 14-1166 (issued December 1, 2014); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

<sup>9</sup> 5 U.S.C. § 8124(a).

<sup>10</sup> *Supra* note 8.

<sup>11</sup> See *M.M.*, *supra* note 8; *L.M.*, Docket No. 13-2017 (issued February 21, 2014); *D.E.*, Docket No. 13-1327 (issued January 8, 2014).

The case must be returned to OWCP for a proper decision to include findings of fact and a clear and precise statement as to whether a spinal cord stimulator is appropriate medical treatment related to appellant's accepted conditions under the customary standards. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 7, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: April 11, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board